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BULLETIN 53

MUNICIPAL TENDERING COMMON PRACTICES

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Ministry of
Municipal Affairs
and Housing

Claude F. Bennett
Minister

Ward Cornell
Deputy Minister

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Honourable
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TABLE OF CONTENTS

	<u>PAGE</u>
INTRODUCTION	1
DEFINITIONS	2
THE PROCESS	
A. ITEMS TENDERED	3
B. TENDERS REQUIRED	3
C. THE ADVERTISEMENT	4
D. TENDER DOCUMENTS	6
E. PLANS AND SPECIFICATIONS	9
F. ADDENDUM	9
G. SECURITY DEPOSITS	10
H. PERFORMANCE BONDS	10
I. RECEIVING TENDERS	11
J. WITHDRAWAL	11
K. OPENING	12
L. REJECTION	13
M. EXAMINATION AND ACCEPTANCE	13
N. CONTRACT	14
QUOTES	15
SUMMARY	15
SAMPLE "A"	17
SAMPLE "B"	18

OVERVIEW

This bulletin examines current tendering practices in a number of Ontario municipalities. It is based upon a review of one hundred municipalities with varying forms of tendering policies. The bulletin provides an overview of tendering procedures, from determining the items or work to be tendered, to entering into a contract between the successful tenderer and the municipality.

The bulletin will be of interest to local officials who carry out tendering at present as well as those who may be contemplating its use in their operations. It is not intended to be a set of specific guidelines that are to be followed; rather it will serve to provide basic information on tendering to those who wish to know more about the process.



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INTRODUCTION

The increasing demand for new and improved services combined with growing economic restraints have placed a new emphasis on the efficient and effective allocation of municipal resources. The tender process is one tool which municipalities can employ in their attempt to obtain the best value for their dollars spent.

Formal tendering procedures have been used for many years by municipalities to purchase a wide variety of goods and services. Items such as machinery, office supplies, and services such as refuse collection and road surfacing are regularly put to tender by municipalities across the province.

The use of formal tendering procedures has an important impact upon the way both the general public and tenderers themselves perceive the operation of many municipalities. Formalized procedures are regarded as a fair and open manner of allocating municipal funds and their use instills public confidence in the manner in which municipalities conduct their business. The perception of proceeding openly and fairly is one of the most important aspects of municipal operations.

Although there are currently no general legislative provisions in Ontario requiring municipalities to tender in a specific manner, some common principles and practices have evolved among those who do utilize the procedure.

This bulletin highlights a number of the characteristics of tendering practices common to many of the province's municipalities. The policies and procedures of one hundred municipalities were reviewed for the purposes of the bulletin. It should be emphasized, however, that this is not intended as a set of specific guidelines for municipal tendering procedures. Rather, it illustrates practices that are widely used and that will be of interest to municipalities examining their own procedures. The bulletin will also be useful to municipalities who wish to establish formal tendering procedures for the first time.

DEFINITIONS

Tendering practices vary from municipality to municipality but a number of common elements exist. Before examining these practices, it might be helpful to review some of the terms and phrases used in most municipal tendering procedures.

Bidder or Tenderer - a person, agent, company or other such entity that formally responds to a call for tenders by submitting a bid to do the work or provide the product.

Tender - an application by a bidder to the municipality stating the cost of providing a good or service to that municipality. Each tender is in competition with other tenders to supply that good or service.

Bid Bond - an agreement of a surety company to pay to the municipality the amount stated in the bond, should the successful bidder fail to enter into a formal contract with the municipality. It is often considered a type of security deposit.

Performance Bond - a form of security designed to protect the municipality from non-completion of a tendered contract. Generally, a surety company agrees to pay to the municipality the full amount of the bid should the tenderer fail to complete the contract as agreed.

Prequalification - a requirement (usually as a condition of submitting a tender) that bidders satisfy the municipality that they have undertaken similar work or supplied similar services on other tenders. This is designed to ensure that bidders are capable of doing the work.

Addendum - additional information supplied by the municipality after the original tender call. Addenda may include new specifications or instructions that potential bidders should address in their tender submissions.

THE PROCESS

There are no general legislative guidelines in Ontario covering municipal tendering but a number of common practices as well as a measure of procedural consistency are used.

A. ITEMS TENDERED

Prior to any tender call, a municipality needs to establish what items or services should be put to tender. In most instances supplies, construction contracts, whether for sidewalks, sewers or roads are let for tender by municipalities.

Municipal services such as garbage collection and snow removal are often provided through companies who bid on tenders called by municipalities.

In many instances municipalities tender for the supply of materials such as road salt, gravel, street lighting equipment, office stationery, vehicles, varying amounts of fuel and the provision of municipal insurance.

There are occasions when municipalities require the expertise of people not employed in the municipality. In these cases the use of consultants is common and the tendering for their services has been effective.

Sometimes, when subsidies are available, the subsidizing agency requires tendering procedures to be used. An example is the Ministry of Transportation and Communications which provides certain subsidies to many Ontario municipalities.

B. DOLLAR VALUES AT WHICH TENDERING IS REQUIRED

Many councils have established tendering policies that must be followed by administrative staff. These policies will often establish a maximum limit to the amount of money staff may spend on goods or services on their own responsibility. Tenders must be called for any

expenditure on goods or services that will exceed this limit. This allows staff to make day-to-day spending decisions necessary to carry on the business of the municipality smoothly but ensures that competitive prices will be obtained on major expenditures.

While value (dollar) limits vary, municipalities with populations ranging up to 10,000 have established limits in the neighbourhood of \$3,000. Amounts in excess of this limit would require a tender. Some municipalities within this population range have not established a specific dollar value. Rather, where staff feel the value of the goods or service is sufficiently high, the decision to tender is often left to the council.

In medium and large communities, whose population range from 10,000 to more than 100,000, the values fluctuate between \$5,000 and \$50,000. The wide variation seems to reflect the individuality of each municipality in establishing tendering policies that meet its unique needs.

Where council does create formal tender policies, it is the common practice to establish values beyond which a call for tenders is required to procure the good or service. This provides a framework within which to work and ensures some measure of accountability.

C. THE ADVERTISEMENT

Once the decision to call for tenders has been made and the municipality has determined what it will require of potential bidders, the municipality usually develops some form of advertising to inform those potential bidders of the municipality's needs.

The development of the advertisement (ad) and its distribution is one of the most important components of the tendering process. The ad explains the municipality's needs and is the vehicle that the municipality uses to attract bidders to the call. It must be attractive to bidders who are not merely qualified, but who are capable of doing good work.

The municipality must decide how wide a coverage the ad should have and how many times it should run. There is some consistency across the province in the distribution of such ads both in local newspapers and in trade magazines such as the "Daily Commerical News". Municipalities with populations under 2,500 generally place their advertisements in trade magazines, since a local newspaper may not be available in those communities. The larger municipalities tend to advertise in both local papers and trade magazines. Almost all municipalities run their ads at least twice in order to ensure that potential bidders are made aware of the call.

Equally important as the distribution and frequency of the ads is the content. The following basic information is usually provided to the potential bidders.

- 1) the name of the municipality or board calling the tender;
- 2) a description of the work or equipment required and the project or contract number to be referenced;
- 3) the quantity being sought;
- 4) where plans and specifications may be obtained;
- 5) the person or place where tenders should be sent;
- 6) the date and time of closing for the receiving the tenders;
- 7) the bonding requirements where applicable; and
- 8) the statement that, "the lowest or any bid may not necessarily be accepted".

The information in the ad must convey concisely the municipality's requirements. Lack of information will hinder a bidder's response to the call. As well, the coverage and frequency of the ad will affect the number of responses that the municipality will receive. The Appendix contains two sample ads that incorporate the usual information supplied to potential tenderers.

Tender Lists

Tender lists are often used to supplement a municipality's advertising procedures when issuing the call. These lists contain the names and addresses of potential bidders and remain as a permanent record to be used by the municipality at the appropriate time. In most instances notice is sent to those on the tender list at the same time as advertisements are placed in the newspapers and trade magazines. The ads serve partly as a precautionary measure should a company or a person on the list inadvertently not be advised of the call, and also to reach qualified potential bidders who may not be on the mailing list.

D. TENDER DOCUMENTS

After the tender call has been advertised, potential bidders interested in placing a tender contact the municipality to obtain the details. Most municipalities have ready for distribution the documents which outline the specifics of the tender as well as the guidelines for the completion of the tender documents.

Municipalities often employ the Canadian Construction Documents Committee's (CCDC) standard forms, especially for small construction jobs. Since most builders are familiar with the forms this standard format simplifies the process even though there may be different requirements from one municipality to another.

While the form and content of the actual documents (other than CCDC forms) issued to prospective bidders vary, they all have some basic items in common. These documents contain information that will form the cornerstone of the development of a bidder's tender.

The documents themselves are generally divided into two sections to facilitate understanding of the municipality's requirements.

I. Instructions to Tenderers

In most municipalities surveyed the instruction section forms a significant part of the document. Instructions should be clear and concise in order to avoid confusion for the bidders when preparing their tenders.

Instructions include information such as:

- 1) the address where sealed tenders will be received;
- 2) the time and date of the closing;
- 3) a requirement that the tender must be completed on the forms supplied;
- 4) a statement that telegraphic or phone tenders will not be accepted;
- 5) a statement that the municipality retains the right to accept all or part of a bid where applicable;
- 6) a statement that incomplete bids will be rejected;
- 7) details of prequalification requirements if necessary;
- 8) the requirements of bid bonds or other such security deposit;
- 9) a requirement that every tender shall be accompanied by an Agreement to Bond. (The agreement should be completed and endorsed by a surety company. This agreement is also called a Performance Bond);
- 10) the fact that all tenders will be publicly opened at the time and on the date and place specified;
- 11) a statement that the lowest or any bid may not necessarily be accepted;
- 12) a statement that where applicable, OMB or other approvals will be required prior to entering into a contract;
- 13) a statement that unit prices govern. (When required by the municipality, unit price refers to the value of individual items bid by the tenderer. Such things as light bulbs, or man-hole covers may be required to be bid in specific units. The price offered by the bidder is the one the municipality will recognize in its considerations.)

- 14) a statement that the bidder has read, understood and agrees with any specifications the municipality has provided.

The instructions reflect the general information contained in the published ad but in much greater detail.

II. **General Conditions**

Accompanying the instructions normally is a document called General Conditions. These conditions form much of the basis upon which municipalities decide to accept or reject a bid. These conditions are designed to protect the municipality's investment and ensure that the project will be completed properly and within the established time frame. The broad categories below are often used by municipalities to make bidders aware of the conditions the municipalities might insist upon before formally accepting any bid.

1. **Subcontracting/assignment** - Many municipalities stipulate that, except for those subcontractors identified by the bidder in the tender, there can be no assignment or subcontracting of the work without the approval of the municipality. This allows a municipality to retain control over who carries out the project or supplies the service. Changes to the work cannot be undertaken without the knowledge of the municipality.
2. **Indemnification** - Municipalities usually require that the successful bidder indemnify and save harmless the municipality against all claims, suits, losses, costs, damages, proceedings or actions arising out of the performance of the work.

Although some municipalities permit the filing of a policy anytime prior to the commencement of the work the majority municipalities surveyed require the successful bidder, within 30 days of tender acceptance, to file with them an insurance policy covering the necessary items mentioned in the preceding paragraph. Considerable

significance is attached to this requirement and it is very important that all bidders be aware of this condition.

3. **Property of the municipality** - In most instances municipalities inform bidders that any damage to or loss of municipal property resulting from the work are the responsibility of the contractor.
4. **Rectification and maintenance** - Potential bidders are warned that should they win the contract they will be responsible for the normal wear and tear of the project or works for the duration of the maintenance period, if one is established. It is made clear that the municipality may correct any problems at the expense of the successful bidder where imperfections in the work arise after the project has been substantially completed.
5. **Non-fulfillment of the contract** - Most municipal general conditions have a specific section dealing with instances where the contract is not fulfilled. Should the municipality find, before it accepts the work as complete, that the terms of the contract entered into are not being complied with, it reserves the right to complete the work and recover the expense from the contractor and his surety.

E. PLANS AND SPECIFICATIONS

On a tender call, plans and specifications, which should be clear and concise, are usually made available, for a fee, to prospective tenderers upon request. This information may be necessary for bidders to complete their tenders accurately and objectively.

F. ADDENDUM

Where municipalities find it necessary to alter the original tendering documents or project specifications, all bidders should be promptly informed of the changes. The new information is sent usually by registered mail as an addendum to the original package. Based upon the additional details bidders can revise their bids accordingly.

G. SECURITY DEPOSITS

Almost every municipality stipulates that each bidder must submit a security deposit with his bid. This deposit is a means of ensuring that a successful bidder will enter into a formal agreement with the municipality upon acceptance of the tendered bid. If for some reason the successful bidder does not sign an agreement his security deposit is usually forfeit to the municipality. Use of the security deposit helps to ensure that only serious bids are received for a tender call.

The type of security deposit varies among municipalities but it seems that the use of a bid bond is on the decline. A larger number of communities are moving to money orders, certified cheques or letters of credit as the acceptable security deposit. The deposits, not negotiated, are returned after the successful bidder and any others to be retained are determined. The successful bidder's deposit as well as those also held are returned not negotiated once an agreement is completed.

There is a measure of similarity in the amount of deposit required among municipalities. Generally, a range of 5 to 10% of the total tender price is the required amount of security. On large calls the amount may be somewhat lower. In any event, the requirement of a security deposit is strictly enforced.

H. PERFORMANCE BONDS

Performance bonds, not to be confused with bid bonds or security deposits, are required in nearly every case where a tender is let for construction or service supply.

Most municipalities insist upon a performance bond guaranteed by a surety company of good standing. This bond is a means of protecting the municipality from a successful bidder who does not complete the work as required in the formal contract. Where this occurs the surety company may be required to pay the municipality an amount up to the bond limit.

The bond can be taken out for any sum but the usual amount insisted upon by municipalities is for 100% of the contract. It is common practice to insist that bids be accompanied by a performance bond before the municipality will consider the bid itself.

I. RECEIVING TENDERS

Once a municipality has sent out all the tender information, the next phase in the process is the receiving of the bids. Most municipalities employ a number of methods to ensure the procedure goes smoothly and fairly.

It is important that all tenders are received by the date and time specified by the municipality. Whether the bid is obtained through the mail or by personal delivery, some record of the time it comes into the possession of the municipality should be kept. In some instances the date and time of receipt is stamped directly on the envelope containing the bid; in other cases, an independent record is kept. Normally the sealed tenders are then placed in a secured container. All municipalities surveyed indicated that unless they maintained a strict adherence to the cut-off time, problems in determining whether or not a bid was properly submitted could be anticipated. All suggested that the keeping of a record of receipt was vital in avoiding any such problems.

J. WITHDRAWAL OF TENDERS

Occasionally a bidder may ask to withdraw his bid after it has been submitted. When this occurs many municipalities insist that the request be made in writing. If a bid is withdrawn it is recorded and at the opening the particular bid is announced as withdrawn. The actual bid amount is generally not made public. The withdrawal of a tender before the opening occurs does not prohibit a bidder from submitting a new bid. It must be received however, prior to the last time for submitting a tender.

K. TENDER OPENING

After the date and time of closing has passed the opening of the sealed tenders occurs. Most undertake the opening within four hours of the closing. Only a few wait until the following day or later to open. Most find that it is best to open the tenders as soon after the closing date and time as possible so that the proceedings will be viewed as open and fair and also to avoid any delays in getting the acceptance procedures underway.

The proceedings at tender openings are usually considered to be very important. In larger municipalities the event is normally attended by the user department head, a member of the purchasing department and, on occasion, a member of the council. (In municipalities where a board of control exists, the Municipal Act provides that it is the duty of the board to call for and award tenders. When opening tenders the board must require the presence of the user department head, or sub-departmental head and, where necessary, the municipal solicitor.)

The proceedings at tender openings are no less important in the smaller municipalities. Here they are generally attended by the senior staff and sometimes by one or more members of the council.

After all tenders have been opened and noted, the actual tender price of each bid is announced, except where a request for withdrawal has been made. Subsequent to the opening, the usual practice is to review each bid to ensure that certain conditions have been met in order to validate each bid. This might include such items as:

- 1) whether or not the bidder has qualified his bid by establishing conditions unacceptable to the municipality;
- 2) whether proper security deposits and other bonding arrangements are included;
- 3) whether the tender is properly signed and sealed;
- 4) whether the calculations, if any, are correct; and
- 5) whether the bid is on the forms supplied by the municipality.

Following this review, the tender prices are recorded and then posted.

L. REJECTION OF TENDERS

There are instances where certain bids submitted to the municipality are rejected. The more common reasons for rejection are:

- 1) where bids are incomplete (for example when all items put to tender in the call are not bid);
- 2) where the bids are not signed or properly sealed;
- 3) where bids are received later than the closing time, even if it is only one or two minutes beyond the time stipulated by the municipality;
- 4) where the bid is restricted or qualified by the bidder (this is usually when a bidder applies certain conditions to his bid beyond those allowed by the municipality);
- 5) where the bid is written in pencil, rather than typewritten or completed in ink;
- 6) where the bid is withdrawn;
- 7) where the bid is received on forms other than those supplied by the municipality; and
- 8) where the performance bonding or security deposit requirements are not met;
- 9) where the required specifications, if any, are not met.

This list is not exhaustive, but it does cover the most frequently mentioned reasons for the rejection of a tender. Generally, these guidelines are formally established and set out in the General Conditions to provide the bidder with a clear statement of the rules to be followed during the tendering process.

M. EXAMINATION AND ACCEPTANCE

Once the council has examined the various tenders and determined which one they wish to accept, an appropriate formal notice is sent to the successful bidder, who is informed that within a specified period of time he will be required to enter into an agreement with the municipality. Failure to formalize the bid by entering into a contract usually results in the forfeiture of the security deposit to the municipality.

As a measure of security, most municipalities have a policy to retain a certain number of the other bids. This allows municipalities the opportunity to select another bid if the winning bidder does not sign the agreement. In most cases, municipalities retain at least one and sometimes two other bids, often the next two lowest (assuming that the lowest bid was accepted). Alternatively, the municipality may decide to re-advertise should they decide not to accept any of the bids.

Council is not bound to accept the lowest bid and this is almost always made clear in the advertisement and the instructions to the bidders. The council's decision may be based not only on price but on other factors, such as the reputation of the firm, Canadian content and the effect on local employment opportunities.

With the acceptance of a tender the municipality and the successful bidder enter into a formal agreement to execute the tender. The importance of the agreement is such that it should normally be drawn up by the municipality's solicitor.

When the contract or agreement has been executed to both parties' satisfaction, the security deposits of all bidders, including the successful bidder, are returned promptly.

N. THE CONTRACT

Although the terms may vary, there are many clauses that are common to most contracts. Included in almost every contract are such things as:

- 1) the contract price or sum;
- 2) the payment schedule, including holdbacks;
- 3) identification of subcontractors;
- 4) time frame for contract or service completion;
- 5) appropriate indemnification;
- 6) the right to carry out inspections and the right to require performance of measures deemed necessary by the municipality.

QUOTES

There are situations where municipalities prefer to use a system of obtaining quotations from suppliers instead of employing formal tendering procedures. In these instances the municipality either requires the goods or services quickly or the value of these items is less than that which would require formal tenders to be called.

While the procedures are not usually formally established, many quotation procedures are based upon tendering principles. In most cases municipalities require staff to obtain three quotes from which one, likely the lowest, would be chosen. The successful quote is then confirmed by the bidder in a letter to the municipality.

SUMMARY

Although there are no mandatory guidelines under which municipalities carry out their tendering procedures, many do follow similar methods. Two things are essential to the success of tendering: clear and concise directions to bidders, and the maintenance of the integrity of the actual selection process.

Municipalities who have employed tendering procedures have found advantages not only in the actual purchasing of goods or services but in other areas of municipal administration and municipal relations. These are summarized below.

- o In the broadest sense the use of tendering helps municipalities define their goals and objectives through fiscal planning. Before tenders are called, municipalities normally participate in planning strategies to determine what goods and services should be purchased and whether or not there are sufficient local revenues to proceed with the expenditure. In effect, tendering helps set the direction that the municipality will take.

- o Tendering assists in developing purchasing policies. Creating a set of tendering procedures aids both staff and council in determining purchasing guidelines. These guidelines indicate the latitude that staff will have with regard to purchasing with or without a tender.
- o A good tendering policy fosters confidence between the council and its administrative staff. Both know and understand how purchasing of certain items can be accomplished based upon a set of established policies and the roles of each are clarified in this process.
- o When the process is carried out in an open and fair manner, confidence is instilled in the management of the municipality both in the eyes of the public and those contractors or suppliers who participate in the tendering process.
- o Employing tendering techniques helps municipalities obtain the best value for the money they expect to spend.

APPENDIX

SAMPLE ADVERTISEMENT "A"

THE CORPORATION OF THE TOWNSHIP OF RIVER

Tenders for the supply of FIVE (5) ELECTRONIC TYPEWRITERS

Contract Number: 1234

SEALED TENDERS are invited for the supply of new electronic typewriters for the Municipal Office building, 1650 Wilderness Road, RIVER, Ontario.

TENDERS will be received until 3:00 p.m. local time,
Monday, November 5, 1984.

BY: Mr. J. Doe

Clerk-Administrator

The Corporation of the Township of River

Box 111

River, Ontario.

A0B 1C0

Tender information may be obtained from the above official.

**THE LOWEST OR ANY TENDER
NOT NECESSARILY ACCEPTED**

J. Doe

Clerk-Administrator

I. Smith

Reeve

APPENDIX

SAMPLE ADVERTISEMENT "B"

THE CORPORATION OF THE TOWN OF LAKELAND

INVITATION for the submission of TENDERS for:
Contract No. 5678

The supply of STORM SEWERS AND WATERMAINS for the Birch Street Extension.

SEALED TENDERS must be received no later than 4:00 p.m. local time on Monday, January 7, 1985, in the office of the Clerk of the Town of Lakeland, 100 North Street, LAKELAND, Ontario, S1X 2Q3

Copies of the tender forms and specifications may be obtained from the Public Works Department Office, 2nd Floor, 100 North Street, upon payment of a \$10.00 non-refundable fee.

The lowest or any tender may not necessarily be accepted.

M. B. Smith
Clerk

G. Jones
Mayor

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